



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 33

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S33-AST-2 [v.1]

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Comm. Sub. [YES]
Amends Title [NO]
First Edition

Date _____, 2011

Senator Clodfelter

1 moves to amend the bill on page 2, line 35 through page 3, line 23 by rewriting those lines to
2 read:

3
4
5 "SECTION 4. Article 1B of Chapter 90 of the General Statutes is amended by
6 adding the following new section to read:

7 "**§ 90-21.18B. Periodic payment of future economic damages in medical negligence**
8 **actions.**

9 (a) As used in this section:

10 (1) 'Future economic damages' includes all economic damages for future
11 medical treatment, care or custody, and loss of future earnings of the
12 plaintiff following the date of the verdict or award.

13 (2) 'Periodic payments' means the payment of money to the plaintiff at regular
14 intervals.

15 (b) Upon the award of damages in any action brought under Article 1B of Chapter 90 of
16 the General Statutes, the court shall, at the request of either party, after hearing and a
17 determination by the court of the amount of the judgment that should be attributed to future
18 economic damages, enter a judgment ordering that the amount of future economic damages of
19 the plaintiff in excess of the sum of:

20 (1) One hundred thousand dollars (\$100,000),

21 (2) The amount of the future medical expenses expected to be incurred by the
22 plaintiff within the next 12 months, including the cost of any special
23 equipment or adaptations necessary for daily care and living arrangements,
24 due to the negligence of the defendant, plus

25 (3) An amount equal to the costs and attorneys' fees incurred and payable by the
26 plaintiff in litigating the case multiplied by a fraction, the numerator of
27 which is the amount of future economic damages in excess of one hundred
28 thousand dollars (\$100,000) and the denominator of which is the amount of
29 the total judgment in favor of the plaintiff,

30 be paid in whole or in part by periodic payments rather than by a lump-sum payment. If the
31 court finds that the sum of subdivisions (1), (2), and (3) of this subsection are insufficient to
32 provide for the plaintiff's immediate needs, the court may make such adjustments in the amount
33 to be paid by periodic payments as the court finds are necessary to ensure that the amount of



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1 the nondeferred compensation will be adequate for the plaintiff's immediate needs. In entering a
2 judgment under this section ordering the payment of future economic damages by periodic
3 payments, the court shall make a specific finding of the total dollar amount of periodic
4 payments that will equal the present value of the jury's lump-sum award to compensate the
5 plaintiff for future economic damages.

6 (c) As a condition to authorizing periodic payments of future economic damages, the
7 court in its order of judgment, shall require the defendant to post a bond or security, or
8 otherwise to assure full payment of future damages awarded by the judgment including that
9 payments be made through the establishment of a trust fund or the purchase of an annuity for
10 the life of the plaintiff or during the continuance of the plaintiff's compensable injury or
11 disability. The purchase of an annuity found by the court to be through a duly licensed and
12 adequately capitalized insurance company shall satisfy the requirements of this subsection. A
13 trust fund found by the court to be adequately funded and insured shall satisfy the requirements
14 of this subsection. For periodic payments to be made directly by the defendant, the court shall
15 approve periodic payments of future damages only if it finds that all payments which are due to
16 be made are secured by a bond issued by an insurance company authorized to write such bonds
17 in this State and which is rated "A plus" (A+) or better by Best's Insurance Reports. If the
18 defendant is unable to adequately assure full payment of future damages, the court shall order
19 that all future damages be paid to the plaintiff in a lump sum pursuant to the verdict. No bond
20 may be canceled or be subject to cancellation unless at least 60 days' advance written notice is
21 filed with the court and the plaintiff. Upon termination of periodic payments, the court shall
22 order the return of the security, or so much as remains, to the defendant.

23 (d) The judgment providing for payment of future economic damages by periodic
24 payments shall specify the recipient of the payments, the dollar amounts of the payments, the
25 interval between payments, and the number of payments or the period of time over which
26 payments shall be made. Periodic payments shall be subject to modification by the court in the
27 event of death of the plaintiff as provided in subsection (e) of this section.

28 (e) In any judgment that orders future economic damages payable in periodic payments,
29 liability for payment of future medical damages not yet due shall terminate upon the death of
30 the plaintiff; however, the court that rendered the original judgment may modify the judgment
31 to provide that damages awarded for loss of future earnings shall not be reduced or payments
32 terminated by reason of the death of the plaintiff, but shall be paid to persons to whom the
33 plaintiff owed a duty of support, as provided by law, immediately prior to the plaintiff's death.

34 (f) In the event the court finds that the defendant has exhibited a pattern of failing to
35 make the payment specified in subsection (b) of this section, the court may do one or more of
36 the following:

- 37 (1) Order that all remaining amounts of the award be paid by lump sum within
38 30 days after entry of the order.
39 (2) Find the defendant in contempt of court and, in addition to the required
40 periodic payments, order the defendant to pay the plaintiff all damages
41 caused by the failure to timely make periodic payments, including court
42 costs and attorneys' fees.
43 (3) Enter other orders or sanctions as appropriate to protect the defendant.

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1 (g) Nothing in this section shall preclude any other method of payment of awards, if the
2 method is consented to by the parties.";
3
4 and on page 3, line 34 by deleting " G.S. 90-21.19A(a)(1)." and substituting
5 "G.S. 90-21.18B(a)(1).".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____